

CHARTER COMMISSION
CITY AND COUNTY OF HONOLULU

TUESDAY, FEBRUARY 8, 2005
COUNCIL CHAMBERS
THIRD FLOOR, HONOLULU HALE
4:00 p.m.

MINUTES

Charter Commission Members Present:

Andrew Chang
Gerald Coffee
Gordon Grau
Amy Hirano (arrived after the meeting was called to Order)
Jared Kawashima
Stephen Meder
Jeff Mikulina
James Myers
Donn Takaki

Charter Commission Members Excused/Absent:

Darolyn Lendio
Jan Sullivan
Malcolm Tom

Others Present:

Diane T. Kawauchi, Deputy Corporation Counsel
Dawn D. M. Spurlin, Deputy Corporation Counsel
Lori K. K. Sunakoda, Deputy Corporation Counsel

I. Call to Order

The meeting was called to order at 4:05 pm by Chair Pro Tempore Donn Takaki. Chair Pro Tempore Takaki acknowledged the presence of eight members of the Commission: Andy Chang, Jerry Coffee, Gordon Grau, Jared Kawashima, Stephen Meder, Jeff Mikulina, James Myers and the Chair.

II. Subcommittee Reports

Rules Subcommittee

Subcommittee Chair Jared Kawashima reported there was no report of the Subcommittee.

Calendar Subcommittee

In the absence of the Subcommittee Chair Jan Sullivan, Chair Pro Tempore Takaki reported that there was no report.

Personnel Subcommittee

Copies of the report of the Personnel Subcommittee were distributed. In the absence of Subcommittee Chair Darolyn Lendio, Subcommittee member Jeff Mikulina reported that the Subcommittee met on Thursday, February 3, 2005 in a joint meeting with the Budget Subcommittee to discuss the personnel needs of the Commission and to provide that information to the Budget Subcommittee for its discussion of the Commission budget requirements for this current fiscal years and for the next two fiscal years. The report identifies the three staff positions that the Subcommittee recommends for hire based on the staff positions from previous Charter Commissions and the recommended pay range for the positions based on the current pay for such personnel and where such personnel would fall within the City's personnel structure. The Subcommittee report recommends the Executive Administrator be hired first and thereafter, working with the Personnel Subcommittee and the Charter Commission the other two positions, one of secretary and one of researcher, would be hired. The salary information was provided to and incorporated into the Budget Subcommittee's report.

Commissioner Gordon Grau inquired whether the recommended salary is likely to attract the qualified personnel needed by the Commission. Subcommittee member Mikulina acknowledged this challenge, balancing the need to attract individuals with the needed skills and being fiscally reasonable, so the Subcommittee agreed upon a maximum \$100,000 a year salary for the Executive Administrator for only an eighteen or nineteen month position.

Commissioner Kawashima inquired of the period to be afforded to individuals interested in responding to the advertisement for the positions. Subcommittee member Mikulina responded that such details would be left to the hiring committee. Subcommittee member Donn Takaki added that the proposed budget requests salary appropriation for the position as early as March. Subcommittee member Takaki also reported that the Subcommittee confirmed that the Commission is not required to advertise for the position but recommends that the position should be advertised at least once in the newspaper to allow everyone an opportunity to know of the Commission's solicitation of personnel. Commissioner Grau suggested that the advertisement include the statement that the recruitment would be continuous until the position is filled rather than to state a closing date, and include a statement that for full consideration, applications should be submitted by a stated date.

Commissioner Meder inquired whether the Personnel Committee would be interviewing and deciding. Subcommittee member Mikulina confirmed that the Subcommittee would interview and make a recommendation to the full Commission. Subcommittee member Takaki confirmed that the Subcommittee's report distributed today states in the last sentence that the Personnel Committee requests that it conduct the initial screening of the applicants and the final interview is to be conducted by the Chair and Vice Chair of the Commission.

Commissioner Chang returned to the matter of the adequacy of the salary range to recruit the caliber of individuals desired by the Commission and inquired of Subcommittee member Mikulina whether the Subcommittee deliberated between the executive assistant II classification versus, for example, the deputy director of a department position in considering the salary range and overall skills and responsibilities of the position. Subcommittee member Takaki responded that the Committee did not consider all of the positions in the City but looked at the positions it considered were appropriate to those to be recruited by the Commission in determining the recommended salary levels. Commissioner Chang shared the concern whether the Commission will be able to secure the talent it desires at the salary range described and inquired whether in the past years the position was at the executive assistant II level. Commissioner James Myers responded that upon research this was confirmed.

In further clarification, Subcommittee member Mikulina responded to Commissioner Chang's concern that in reviewing materials from the 1991 Charter Commission, distinguishing between the level I and level II; level I is characterized by its provision of top-level staff and executive assistant and managing to the mayor, managing director, head of a major operating department and then level II is a top-level staff executive assistant to the mayor, managing director, head of a major operating department where the work is more responsible and complex by virtue of extensive planning and coordination required.

Subcommittee member Takaki noted that the Personnel Subcommittee's report states in the last line on the third page that the final interview is to be done by the Chair and Vice-Chair of the Commission. Subcommittee member Takaki recommends however that in the absence of a Chair and Vice-Chair of the Commission, that the Chair Pro Tempore be allowed to conduct the final interview with the Personnel Committee to avoid the delay of another month before interviews can commence.

The motion of Subcommittee member Takaki to amend the Personnel Subcommittee report to request that the Chair Pro Tempore conduct the final interviews with the Personnel Committee was seconded by Subcommittee member Mikulina, and approved by unanimous vote of the Commission.

Subcommittee member Mikulina commented that Commission members may join the Personnel Committee to participate in the interviews, and up to six may do so without a sunshine law notification requirement.

Action: Chair Pro Tempore Takaki solicited a motion to approve the Personnel Subcommittee report with the amendment on page three that the Chair Pro Tempore in the absence of the Chair and Vice Chair of the Commission, be allowed to conduct the final interview screening with the Personnel Committee. The motion was made by Commissioner Mikulina, seconded by Commissioner Myers and was approved by unanimous vote of the Commissioners.

Budget Subcommittee

Copies of the handout of the Budget Subcommittee were distributed at today's meeting. Budget Subcommittee Chair Myers reported that the Budget Subcommittee met together with the Personnel Subcommittee. He addressed two items that have arisen since their meeting. Initially he stated that he does not share the concern of some of the other Commissioners that the Commission may be unable to attract qualified individuals at the recommended salary levels because he works in the business community and is of the opinion that those salaries would be pretty good, though they may not be in the City system. He explained that for the two secondary positions, the Subcommittee recommended \$50,000, which is less than the maximum salary range of \$60,000. This is an area the Commission should review to consider whether for budget purposes, the salary should be \$60,000. Secondly, he just learned today that the prior commission expended approximately \$80,000 in legal fees while the current budget proposal does not include any sum for legal fees but there were problems and controversy with the prior commission and some lawsuits were filed. Subcommittee Chair Myers questioned whether this budget should consider the worst case and budget \$100,000 for legal fees. He did not find legal fees in the records of the prior commissions.

As a follow-up question Commissioner Kawashima asked what is their personal liability for serving as Commissioners. Since the prior commission expended \$80,000 in legal fees, a lawsuit is a possibility so he wants to know what is his personal liability. Subcommittee Chair responded that he was advised that the E&O coverage didn't apply to them; Commission Mikulina confirmed that the matter was raised at the budget. Commissioner Kawashima voiced his position that legal fees should be included in their budget since the City Council has the option to delete it should it so desire.

Subcommittee Chair Myers requested the availability of Deputy Corporation Counsel Dawn Spurlin to respond to questions. Subcommittee Chair Myers questioned whether the prior commissions' problems involved the manner in which it was constituted. Deputy Corporation Counsel Diane Kawauchi responded that there were four lawsuits filed regarding the 1998 Charter Commission and thought the suits challenged different aspects of the commission. The lawsuits, she confirmed, were all founded upon a challenge to the authority to convene the commission. Subcommittee Chair Myers questioned whether the Commission should anticipate lawsuits happening again since it doesn't appear to have occurred with the Charter Commissions in the 80's and 90's. Deputy Corporation Counsel Kawauchi responded that this Commission shouldn't anticipate a challenge to the authority to convene this Commission since this Commission was convened pursuant to a charter amendment that was approved by the electorate in November 2004. She explained that the time for challenge of the amendment by way of an election challenge has long passed. Subcommittee Chair Myers commented that there was not record of any other kind of lawsuits against a commission. Deputy Corporation Counsel Spurlin clarified that there were prior lawsuits involving the 1981 Charter Commission, one challenged the form of the ballot proposal as an all-or-nothing vote and the other lawsuit challenged the ability of the commission chair to participate and vote in all matters and not limited to votes to break a tie-vote.

On question of Commissioner Kawashima, Deputy Corporation Counsel Spurlin confirmed the need to research the question of the personal liability of the Commissioners for action taken on the Commission because the Commissioners are not officers of the City, and offered to respond at the next Commission

meeting. Commissioner Kawashima expressed the desire to budget for legal fees if the Commissioners are subject to personal liability so that the Commissioners will have representation if sued for actions taken as Commissioners. Commissioners Myers and Chair Pro Tempore voice their concurrence with the position.

Subcommittee Chair reiterated the need to resolve the issue of the inclusion of legal fees in the budget but proceeded to summarize the other items in the handout. He noted that the Subcommittee tried to budget relatively high. He clarified that computer equipment is budgeted under equipment/furniture at \$2,000 per month for the duration. All the figures shown in the left column of the page are similar monthly amounts; where \$400 is shown for phone, it is per month. Subcommittee Chair Myers clarified that the three columns on the right side of the page represent three different fiscal years; money to be appropriated right now is for the '04-'05 year. The only full year the Commission will be in existence will be the '05-'06 year to June 30, 2006. Thereafter from June 30 until the end of the calendar year would fall into the '07 fiscal year

In response to Commissioner Kawashima's inquiry Subcommittee Chair Myers confirmed that the phone expenses include a cell phone for the executive assistant. Chair Pro Tempore Takaki stated his understanding that the phone expenses includes three phone lines, a fax line with the data associated with it and a cell phone.

Chair Pro Tempore Takaki also apprised the Commission that the proposed budget does not include stipends for the Commissioners; that in the past, Commissions have included stipends, probably for travel or other items for the Commissioners, but given the fiscal situation of the City the decision was not to provide for stipends but if the Commissioners feel otherwise this may be discussed as an issue.

In response to the inquiry of Commissioner Grau, Subcommittee Chair Myers confirmed that the salaries include benefits that provision therefore is in the fourth line down, at 20%, which is fairly standard.

Chair Pro Tempore Takaki noted his understanding that the actual cost of the legal fees for the 1998 Charter Commission was \$84,000, and recommended that due to the manner in which legal fees have changed, budget \$100,000 for '05-'06. He stated that if a budget request is to be submitted, legal fees should be included. Subcommittee Chair Myers inquired whether the request is to be for '05-'06 alone and for \$100,000. Chair Pro Tempore Takaki explained that legal fees should be included for '06-'07 because the challenge may extend into that year so an additional \$100,000 should be included. Chair Pro Tempore Takaki clarified that the Council Chair at the last meeting of the Charter Commission asked the Commission to submit at budget for the remainder of this fiscal year which end June 30th '05 and also a budget request for the next fiscal year '05-'06 which must go through the budget process. There was no request for a budget for '06-'07 but for the Commission's internal planning purposes the Budget Commission has provided for it but the Commission will not be submitting a '06-'07 budget to the Council at this time.

Commissioner Grau expressed the position that without a response on the question of the Commissioners' personal liability for actions taken on the Commission, the budget for legal fees should

be included. Commissioner Mikulina concurred. Subcommittee Chair Myers inquired whether legal fees should be included for '04-'05. Chair Pro Tempore solicited recommendations for the inclusion of professional fees for '05 or for this year '04-'05. Chair Pro Tempore confirmed that budgeted funds not expended expire and do not roll over to the next term.

Commissioner Grau inquired whether there was a pattern in the manner of expenditure of funds over the duration of the Commission's activities. Subcommittee Chair Myers responded that the available information was two-year lump sum expenditures so the amounts are best-guess scenario there were no spreadsheets or anything like that to reference. As to advertising and such, the Subcommittee assumed that advertising would not be required until the last year and thus weighted heavily later.

Commissioner Meder noted that in budgeting for a university position, as much as 35% is included for fringe benefits so the budget may be a little low.

Chair Pro Tempore Takaki responded that, referring to the Personnel Committee report, the Committee reviewed the positions in comparison to similar City positions and the budget or the benefit package was comparable also to the City positions, which were at about a 20%. Chair Pro Tempore Takaki did agree, however, and noted that, within his private company as well, 20% for certain positions is low but based upon the research the Committee had done, they found 20% to be the correct number.

Commissioner Myers added that the figures would not include retirement, because none of the positions would qualify for retirement unless they already work for the City, which might be a problem. He added that the 20% should be fine, noting that the employees at his company come in at about at about 17-18 per cent.

Commissioner Mikulina added that an in-house City doctor and dentist may also be available to the employees of the Commission.

Chair Pro Tempore Takaki asked if there was any further discussion. There being no further discussion, Chair Pro Tempore Takaki discussed a motion to approve this budget with the amendment or with the \$100,000 budgeted in for legal fees in 05/06 so that the Commission could submit the budget to the Council Chair.

Commissioner Myers asked whether Robert's Rules of Order applied; and whether, because the report came from a subcommittee of the group, it should have been on the table already moved and seconded for this budget; so that any changes would have to be amended by motion an amendment to amend.

Chair Pro Tempore Takaki thanked Commissioner Myers for making the point and proceeded with further discussion to clarify the issues. Chair Pro Tempore Takaki asked whether there was any concern with the \$1,000 budgeted in for legal fees.

Commissioner Myers inquired whether the figure was actually \$100,000.

Chair Pro Tempore Takaki replied that for fiscal year 2004-05, there is \$1,000 budgeted for legal fees. Commissioner Myers asked what would happen should there be a legal problem between now and June, and the significance of the \$1,000 figure.

Commissioner Myers stated that he believed that the figure was more for consulting than anything else, in case the Commission needed to consult with legal counsel.

A question was raised, if the budget was amended to take into account the \$100,000 in legal fees and next week the Commission finds out that individual Commissioners are not personally liable, whether the \$100,000 would still be added.

Commissioner Myers noted that the budget could be changed at that point.

Chair Pro Tempore Takaki expressed the belief that, when the Commission goes through the budget process, the Commission would be asked to take that away from the request by the Council.

Commissioner Myers noted that even if the request gets to the City Council his feeling was that if the Council, at that point, have decided that the Commission was not personally liable, that the Council would take out or not approve the request.

Deputy Corporation Counsel Kawauchi then suggested that the Commission adopt by motion the report of the Subcommittee and then, if there were any amendments to be made, the Commission would make motions to amend the report because it was discussed and offered by way of a Subcommittee action.

Action: Commissioner Mikulina moved that the Commission adopt the Budget Subcommittee report. Commissioner Myers seconded the motion. All commissioners present voted in favor of the motion, and the motion was passed.

Action: Commissioner Myers moved that Budget Report be amended to add \$100,000 for legal fees in fiscal year 2005-2006. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed.

Commissioner Meder had an additional question about the budget, asking if the Commission would want to increase to \$60,000 that potential salary for the other two staff positions putting them at the highest end of the bracket; or whether the Commission wanted to leave it at \$50,000. Commissioner Myers noted that if other people are concerned, the Commission should probably do it now.

It was discussed that if a good candidate was found, there might not be enough leeway; that \$50,000 is not the bottom of the pay range, it was more about \$48,000; and that the Commission might want to give themselves some protection.

It was noted that the Commission would not have to spend the full amount, but that increasing the amounts would allow the Commission to get there if necessary.

Action: Commissioner Meder moved that Budget Report be amended to increase the budget \$10,000 for each of the two staff positions, being the secretary and researcher, so that allowable funds would go from \$50,000 to \$60,000, and in addition to that increase, to also include the associated benefits. Commissioner Myers seconded the motion. All commissioners present voted in favor of the motion, and the motion was passed.

The Personnel Committee was thanked for their efforts.

Deputy Corporation Counsel Kawauchi then raised another Budget Committee matter. She had been tasked to contact the Department of Facility Maintenance and Department of Design and Construction to look for space for the Commission. She received a phone call just a few minutes before the meeting this afternoon to advise that there is space in a building across from the Honolulu Police Department at 820 South Beretania Street and a decision probably needs to be made this week to indicate whether the Commission would be interested in pursuing it. The total area is 3,700 square feet and City Council will be using a great portion of that area but there will be enough space for three or four Commission staff members if there is an interest. It is close enough to the City parking garage that the employees could park at the City parking facility.

Commissioner Hirano inquired as to whether the Commission would be using only a portion of the 3,700 square foot area.

Deputy Corporation Counsel Kawauchi replied perhaps, reporting that when she spoke with Patrick Gomes, of the Department of Design and Construction, Mr. Gomes estimated, for three or four staff members, maybe a space of 600 square feet. Mr. Gomes thought the cost was incredibly good at \$1.10 gross per square foot.

In order to put a motion on the floor for discussion, Commissioner Myers moved that the Commission pursue housing in that building along with the City Council.

Chair Pro Tempore Takaki asked if there was a need to clarify, then who would pursue the matter.

Deputy Corporation Counsel Kawauchi agreed and asked whether it was a function of the Budget Committee, Budget Subcommittee, or whether the Commission could simply assign the matter to an individual.

Commissioner Myers asked whether, if the City Council was going to take the major part of space, that the Council would be negotiating the leases for the space.

Deputy Corporation Counsel Kawauchi replied that it would be Mr. Gomes in Department of Design and Construction who would do it for the City, and that Mr. Gomes would do it for all of the City tenants.

There was further discussion as to whether a motion would be advisable. Commissioner Meder asked what the City Council's use of the space would be. Deputy Corporation Counsel Kawauchi believed that the City Auditor will be moving there.

Chair Pro Tempore Takaki asked if the Commission to take this space, if they needed to amend the budget further. Commissioner Myers thought that the budget could be left as is until a decision was made; Deputy Corporation Counsel Kawauchi concurred. There was some further discussion by Commissioners Chang and Myers as to coordination between the Commission or Budget Committee and the City's Design and Construction department regarding configuration and construction of the office space.

Action: Commissioner Myers moved that the Commission indicate to the City Council that the Commission would like to pursue office space at 820 S. Beretania Street. Commissioner Hirano seconded the motion. All commissioners present voted in favor of the motion, and the motion was passed.

Commissioner Myers stated that he would make the corrections to the budget and resubmit it.

III. Public Testimony

The Chair Pro Tempore solicited public testimony on any agenda item. None was submitted or offered.

IV. Announcements

The Chair Pro Tempore made one announcement. For the next meeting, the Chair Pro Tempore suggested that a "sunshine law" training or workshop.

V. Next Meeting Schedule

The Chair Pro Tempore suggested that the next meeting be set for after the scheduled confirmation of the thirteenth member of the Commission. The Chair Pro Tempore suggested the second Tuesday of every month, at the same time, as a regular meeting time. The next meeting was set for March 8, 2005, at 4:00 p.m., in Council Chambers.

VI. Adjournment

Commissioner Chang moved to adjourn the meeting. The motion was seconded. All commissioners present voted in favor of the motion, and the motion was passed. The meeting was adjourned at 4:50 p.m.